

TOWN OF TIVERTON
ZONING BOARD OF REVIEW MINUTES

April 1, 2009

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, April 1, 2009 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Susan Krumholz, Lise Gescheidt, Richard Taylor, Mike Mello, alternate, and Raymond LaFazia.

Also present were: Peter Ruggiero, Town Solicitor and Sally Ferreira, Court Reporter.

1. A petition has been filed by the Tiverton Yacht Club, 58 Riverside Drive requesting a variance to Article V, Section 1 of the Tiverton Zoning Ordinance in order to permit existing lockers to remain located at 0 Riverside Drive, Tiverton, RI being Map 6-5, Block 73, Card 30 on Tiverton Tax Assessor's maps closer to the side yard setback than currently allowed in a waterfront zoning district.

Chairman David Collins recused himself from this petition due to the fact he is a member of the Tiverton Yacht Club. Vice Chairman Jay Jackson chaired this petition. The petitioner is requesting a continuation because they are awaiting a survey on their request for a variance related to the lockers. The petitioner does not wish to proceed until the survey is completed. Ms. Krumholz made a motion to continue this petition to the next meeting. The vote was unanimous. This petition is scheduled for the May 6th Zoning Board of Review meeting. Voting were: Vice Chairman Jay Jackson, Ms. Krumholz, Mr. Taylor, Ms. Gescheidt and Mr. Mello.

2. A petition has been filed by the Tiverton Yacht Club of 58 Riverside Drive, Tiverton, RI requesting a variance to Article XIV Section 5 of the Tiverton Zoning Ordinance in order to install an individual septic disposal system (ISDS) within 200 feet of the Sakonnet River to replace an existing ISDS at 58 Riverside Drive, Tiverton, RI being Map 6-5 Block 70 Card 5 on Tiverton Tax Assessor's maps because extension, enlargement or moving of a legal non-conforming use requires a variance in an R40 zoning district.

Chairman David Collins recused himself from this petition due to the fact he is a member of the Tiverton Yacht Club. Vice Chairman Jay Jackson chaired this petition. The petitioner is requesting a continuation because apparently they're working on an agreement and they need a little more time before coming to the Zoning Board of Review. Ms. Krumholz made a motion to continue this petition to the next meeting. The vote was unanimous. This petition is scheduled for the May 6th Zoning Board of Review meeting. Voting were: Vice Chairman Jay Jackson, Ms. Krumholz, Mr. Taylor, Ms. Gescheidt and Mr. Mello.

3. A petition has been filed by Olive M. & Rosemary Eva of 4019 Main Road, Tiverton, RI appealing the decision of the Building Official to issue a permit on January 13, 2009 for a freestanding sign located at 3988 Main Road, Tiverton, RI being Map 2-3 Block 125 Card 16 on Tiverton Tax Assessor's Maps and located in an R80 zoning district.

Jeremiah Leary, the attorney representing the petitioners stated that at 4:30 today he received a voice-mail from Jodi Roy indicating she received a letter from an attorney in Providence stating that he had just been notified of this matter and was requesting a continuance. The Board had a copy of this letter. Mr. Leary stated he is ready to go forward and was not happy about this but; nonetheless, he would request a continuance to the next month's meeting. Mr. Jackson so moved. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairman David Collins, Mr. Taylor, Mr. Jackson, Ms. Gescheidt, Mr. Mello and Ms. Krumholz.

4. A petition has been filed by Tiverton Little League requesting a special use permit to Article XII, Sections 7.f., 7.g., and 7.i. of the Tiverton Zoning Ordinance in order to install sponsorship signage at the Town Farm Ball Fields located at 3524 Main Road, Tiverton, RI being Map 2-5 Block 119 Card 3 on Tiverton Tax Assessor's maps whereby these signs are prohibited and require a special use permit in an R80 zoning district.

The Chairman stated the Tiverton Little League applied for a petition to the Zoning Board prior to getting approval from the Town Council expecting the Town Council would provide an approval but they did not. So it is for this reason the Tiverton Little League is requesting this petition be continued to the May 6th Zoning Board of Review meeting. The Chairman asked the Board if there was any objection and there was none. The Vote was unanimous. Voting were: Chairman David Collins, Mr. Taylor, Ms. Krumholz, Ms. Gescheidt, Mr. Jackson, and Mr. Mello.

5. A petition has been filed by Christopher Francis of ABlast Inc requesting a variance to Article IV Section 12.d. of the Tiverton Zoning Ordinance in order to store a blasting magazine at 1764 Crandall Road Rear, Tiverton, RI being Map 5-3 Block 131 Card 35A of the Tiverton Tax Assessor's Maps whereby storage of flammable and/or explosive materials is not allowed in a R80 zoning district.

DECISION:

Charles Coelho the property owner at 1764 Crandall Road under the CMC Family Limited Partnership came before the Board along with Christopher Francis of ABlast, Incorporated located at 703 Metacom Avenue in Bristol, Rhode Island. Mr. Coelho stated they would like to apply for the ability to store explosives in a magazine rack on his property located in Tiverton which the current use is a gravel pit. At this point, Mr.

Coelho turned the matter over to Mr. Francis so he could explain the details in terms of design layout. A letter obtained from an ATF officer explaining exactly what the qualifications are of such a magazine storage rack was submitted to the Board along with some photographs. The Chairman accepted the photographs and marked them as Exhibit A. The letter from the U.S. Department of Justice signed by Michael T. Riley dated 31, March 2009 was marked Exhibit B.

Mr. Francis went on to explain this petition. He stated it's a storage facility made out of half inch steel, a safe-type box that's lined with both sheet rock and plywood. It has a combination lock as well as two padlocks so that the locks cannot be altered. The Chairman asked what is stored in this box and Mr. Francis stated high explosives which would consist of dynamite and gelatins and a handful of blasting agents along with detonators made of electric blasting caps. Mr. Francis stated the purpose of these explosives is for mostly residential and commercial sites where ledge exists for placement of utilities, foundations, et cetera.

The Chairman asked Mr. Francis what security measures will be taken to ensure that the explosives would be secured. Mr. Francis replied he would follow all of the ATF requirements as he does now at his facility in Bristol. Mr. Francis directed the Board to the photographs submitted a couple of weeks ago to get an idea on what the storage magazines would look like.

Mr. Taylor asked Mr. Francis about his licenses which he currently holds. Mr. Francis stated he has a license to blast in Massachusetts and Rhode Island and the company has obtained all the bonds and permitting to both transport and store explosive material.

The Chairman asked Mr. Francis how much explosive material does he expect to store in these magazine racks and Mr. Francis replied no more than two ton of ammonia nitrate and maybe a ton of high explosives.

The Chairman asked Mr. Francis if the fire department was aware of this proposal and Mr. Francis replied the fire department has not been notified yet because he wanted to come before this Board first to get some comments. The Chairman stated ordinarily this Board would expect an input from the fire department for safety issues.

Mr. Taylor asked if there was an alarm system in place and Mr. Francis replied, no, because it is not required by the ATF protocol, but if it was a necessity, there would be no problem putting one in. Mr. LaFazia asked Mr. Coelho to explain the reason he is leasing the property to ABlast and Mr. Coelho responded currently it's an existing gravel pit licensed since he believes the 70's and there is no activity there so he thought that would be the best place for this.

At this time, the Chairman invited the audience's input. The question was asked by an audience member if storage of explosives would be an additional commercial use. The Chairman asked Mr. Ruggiero for clarification. Mr. Ruggiero stated it's not a permitted use in this district so they need a use variance because you have an existing nonconforming use and now you're trying to introduce a second use on the property. Mr. Ruggiero went on to say the additional issue the Board needs to consider based on the

testimony this is unrelated to any activity on the property because even though the gravel pit is inactive, that's the principle use of the property.

Numerous abutters spoke up and stated they are in opposition to this request. One abutter stated she is absolutely against this because it only takes one accident and one mistake and she is not willing to take that risk. At this time, the Chairman read into the record a letter sent from Phillip Durfee Kless dated March 16th, 2009. This letter was marked Exhibit C.

Upon being sworn in, Ronald Martell of 952 Crandall Road stated he strongly opposes this request because this is a safety issue against the residents in the area and in his opinion, there is potential for a possible explosion with life threatening results.

At this time the Board went into executive session to discuss this matter. Mr. Taylor made a motion to deny for the reason being the petitioners do not meet the test for use variance, that in granting the use variance the subject land structure cannot yield any beneficial use and it does not meet the test of public safety. Mr. Taylor also moved the fact that this facility would be situated in a fairly remote area without a lot of people around with no alarm system, in his opinion, it would be fairly vulnerable. Mr. Taylor further moved it certainly doesn't meet the intent of the zoning for that area and the relief would be contrary to public interest. Ms. Gescheidt added in denying the petition, there would be no unnecessary hardship and in her opinion this is an attempt to improve the economic benefit to the owner of the land. Ms. Gescheidt concluded in saying this is an inherently dangerous activity that poses a risk of harm to people in the neighborhood and it would certainly change the character of the neighborhood and interfere with the ability of the people that live there to enjoy their property. Mr. Taylor accepted Ms. Gescheidt's additions to his motion. Ms. Gescheidt seconded the motion. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Mr. Jackson, Mr. Taylor, Mr. LaFazia and Ms. Krumholz.

6. A petition has been filed by Douglas Rivera, President of Nonquit Realty Corporation requesting a modification to the decision by the Tiverton Zoning Board of Review dated May 9, 2008 regarding the property located at 2139 Main Road, Tiverton, RI being Map 1-9 Block 74 Card 1 on Tiverton Tax Assessor's maps and located in a Waterfront zoning district.

DECISION:

Richard Sherman the attorney representing the petitioner in this matter came before the Board and stated Mr. Rivera who is the president of Nonquit Realty Corporation has submitted the request for the modification. At this time, Mr. Sherman requested the Board's indulgence as he set up some larger copies of the drawings which are attached to the petition. The request was granted.

The Chairman stated this Board approved a variance for this property but now, apparently, the petitioner is making some changes. Mr. Sherman replied in the affirmative and went on to say in the decision of the Zoning Board dated May 9th, 2008,

which is Appendix A to the petition, it provides in the second to last paragraph on page two of the document that if there are any changes to the approved plan, they can only be made with the approval of the Zoning Board. Mr. Sherman stated Mr. Rivera will explain in a bit more detail the reasons for those changes.

The Chairman invited anyone in the audience who would like to see these charts or drawings to come forward. At this time, Mr. Sherman explained the drawings. He stated in the May 2008 zoning decision, this Board approved a plan for the renovation of the existing building of the proposed project. He went on to say the applicant is proposing a simple modification of the footprint which is about 700 to 800 square feet less in square footage but no change in use. Mr. Sherman stated these changes are dictated primarily by geo technical consideration and cost.

Mr. Sherman discussed two drawings that show elevations of the proposed building based on the revised footprint which is the subject of the petition and they're also contained in Appendixes D through G of the application. Mr. Sherman further stated the basic design of the building is fundamentally the same as that which was approved by the Zoning Board a year ago and based on the renderings which were presented at that time in terms of the basic outline, the materials used, et cetera. The last two drawings Mr. Sherman discussed showed perspectives of what the renovated building would look like based on the revised footprint which is the subject of this petition.

Mr. Rivera was sworn in and testified to the reasons behind the proposed modification. The first reason mentioned was geo technical concerns. At this time, Mr. Rivera stated they recently replaced the bulkhead to shore up the granite slabs but adding loading to this section could compromise the bulkhead potentially causing the bottom of the bulkhead to kick out. The Chairman recalled that was where the spa was going to be located and Mr. Rivera responded the spa is going to be on the first floor and the rooms for the inn would be on the second floor. The Chairman asked if that was a change to the approved plan and Mr. Rivera stated no, that it was always the case. The Chairman asked what was going to be in the section being removed and Mr. Rivera responded that would have been more inn rooms and it would have been a larger area for the spa.

Mr. Rivera continued to say one of the reasons he also wants to do the reduction in size is originally fifteen rooms were proposed for the inn. After running the numbers, it was determined fourteen rooms was sufficient to support the business model. Mr. Rivera commented it doesn't make sense to build something that will not be needed from a cost standpoint. Mr. Rivera advised the Board the architects have been able to design it and work within that footprint.

Along with that, Mr. Rivera stated this new footprint allows for a compact, tighter design and also opens up more water views for residents and neighbors and a smaller footprint creates a more compact design, a more environmental design, less warm water runoff, less infiltration into the ground, less impermeable surfaces. Mr. Rivera informed the Board after the petition was approved by the Zoning Board in May 9th, 2008, he consulted several contractors and the amounts he was getting back to build this project exceeded the construction budget.

At this time the architect was called to testify. Eric Howeler, an architect licensed to practice in the State of Rhode Island, Massachusetts, Virginia, the District of Columbia and New Jersey, was sworn in. Mr. Sherman asked Mr. Howeler to list his qualifications. After hearing Mr. Howeler's qualifications and answering some questions, the Board recognized him as an expert in the subject of architecture.

Mr. Howeler discussed the drawings and answered questions regarding building code and FEMA requirements. Mr. Howeler stated one of the minor modifications has been the raising of the building because FEMA is concerned with flood plains. The minor modification shows the building is up higher which will be safer and compliant with FEMA regulations. The Chairman asked why the back wall is at an angle and Mr. Howeler responded the previous design with the L shape, certain rooms would not have a view of the water because it would be blocked by another room. Mr. Rivera added in angling the wall and pulling it back farther from the water the building would not be in the CRMC setback. Mr. Howeler concluded by saying the request for this modification is based upon economic factors, larger environmental factors, wanting to minimize the footprint, wanting to compact the building and added a more compact building is energy efficient to run and maintain.

Michelle Lebreux of 2140 Main Road was sworn in and stated she lives directly across the street from the building and is totally in favor of having something nice going across the street from her house. She went on to say she would want something to stay in character with the surrounding area. She suggested the applicant should be encouraged to move forward as quickly as possible because the building as it stands now is a fire hazard. Sally Black of 64 Broadview Drive was sworn in and stated the applicant has been working very hard in making a major investment in Tiverton. Herb Tracy of 80 Bridgeport Road was also sworn in and stated the building is an eye sore and he is in support of this applicant trying to improve the building and the economic situation of the town.

The Board went into executive session to deliberate. Ms. Krumholz stated this Board spent an extensive amount of time reviewing this matter when it came before them the first time and it doesn't seem that significant of a modification. The Chairman agreed and added they're reducing the intensity of the use. Ms. Krumholz made a motion to accept the petitioner's request for modification to the Zoning Board's decision dated May 9, 2008 but that all previous conditions be incorporated. Ms. Gescheidt seconded. The vote was unanimous. Voting were: Chairman David Collins, Ms. Gescheidt, Ms. Krumholz, Mr. Taylor, Mr. Jackson and Mr. LaFazia.

7. Remanded by Superior Court to allow for the introduction of new evidence and reconsideration by the board of their decision dated April 3, 2008 on the matter of: A petition has been filed by Bryan N. Sanford, Jr. of 84 Cynthia Avenue, Tiverton, RI appealing a decision of the Tiverton Building/Zoning Official to issue a notice of violation dated January 28, 2008 to cease and desist construction of a new single family dwelling located at Cornell Road (0 Crandall Road) Tiverton, RI being Map 4-8 Block 140 Card 4 on Tiverton Tax Assessor's Maps and located in a R80 zone.

The Chairman stated apparently the petitioner and the abutters are working on an agreement and, therefore, they are asking for a continuation. There was no objection from the Board. This petition will be continued to the May 6th Zoning Board of Review meeting.

ADMINISTRATIVE ISSUES:

The Chairman asked if there was any legal business up for discussion. Mr. Taylor made a motion to approve the minutes of the February 4th Zoning Board meeting as written. Mr. Jackson seconded. Ms. Gescheidt and Mr. LaFazia did not vote due to the fact they were not at this meeting. The vote was unanimous. Voting were: Chairman David Collins, Ms. Krumholz, Mr. Taylor and Mr. Jackson.

Mr. Ruggiero brought to the Board's attention an on-going concern. He informed the Board either applicants or parties in interest would try to contact him outside of the meeting and ask him for his legal opinion, advice or direction. Mr. Ruggiero went on to say he specifically tells them that it is not his practice to advise them because the Town is his client. Mr. Ruggiero also stated he does not mind talking about procedural matters but when it comes to specific matters that are before the Board, he will refrain from that kind of interaction. The Chairman stated that has always been the Board's understanding and the Board appreciates the position he is in.

On a further matter, Mr. Taylor stated a couple of months ago the Board agreed that they would be receiving the decisions electronically and none have been received as of yet. Mr. Taylor went on to say it's a much better form to review what the Board has done on previous petitions when things come back later. Mr. Ruggiero responded he will remind Jodi to do that.

Whereupon the Zoning Board or Review meeting of Wednesday, April 1st, 2009 was adjourned at 9:09 p.m.

SSF/ZBR

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing 1-8 pages are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 29th day of April, 2009.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2009

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